

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA**

In Re:

Bankruptcy No. 24-30167
Chapter 7

Pro-Mark Services, Inc.,

Debtor.

Erik A. Ahlgren, as Chapter 7 Trustee of the
Bankruptcy Estate of Pro-Mark Services, Inc.,
As Administrator of the Pro-Mark Services, Inc.
Employee Stock Ownership Plan, and as
Trustee of the Pro-Mark Services, Inc. Employee
Stock Ownership Trust,

Plaintiff,

vs.

Adversary No. 24-07014

Connie Berg, Kyle Berg,
Connie Berg Revocable Living Trust,
Kyle R. Berg Revocable Living Trust,
Chad Dubois, Mandy Grant and Miguel Paredes,

Defendants.

**AUTHORITIES CITED AND/OR CONSIDERED IN ORAL RULING
ON APRIL 2, 2025**

I. STATUTES AND RULES

29 U.S.C. § 1104(a)(1)(B)

29 U.S.C. § 1106(a)(1)(A), (D)

29 U.S.C. § 1108(b)(17)(A)

29 U.S.C. § 1108(b)(17)(B)(ii)

Fed. R. Civ. P. 8(d)(2)-(3)

II. CASES

A. Pleading Inconsistent Facts

Whitney v. Guys, Inc., 700 F.3d 1118 (8th Cir. 2012)

Babcock & Wilcox Co. v. Parsons Corp., 430 F.2d 531 (8th Cir. 1970)

Blankenship v. Louisville-Jefferson Cnty. Metro Gov't, 2024 WL 1221180 (W.D. Ky. Mar. 21, 2024)

Modern Point, LLC v. ACU Dev., LLC, 2020 WL 13032696 (D. Minn. Oct. 22, 2020)

Boyd v. Larregui, 2020 WL 5820491 (D. Conn. Sept. 30, 2020)

Iseman v. Werner, 2020 WL 4674113 (E.D. Tenn. Aug. 12, 2020)

Brahmamdam v. TriHealth, Inc., 2020 WL 620009 (S.D. Ohio Feb. 10, 2020)

N. Am. Bullion Exch., LLC v. CC Trading, LLC, 412 F. Supp. 3d 1119 (D.N.D. 2019)

Cent. United Methodist Church, Inc. v. Barbstan Partners, Ltd., 2019 WL 2179238 (W.D. Ark. May 20, 2019)

Prairie River Home Care, Inc. v. Procura, LLC, 2018 WL 3621208 (D. Minn. July 30, 2018)

Gucwz v. Lawley, 2017 WL 2831691 (E.D. Mich. June 29, 2017)

Aaron v. Medtronic, Inc., 209 F. Supp. 3d 994 (2016)

Saddler v. Bank of Am. N.A., 2014 WL 3600413 (E.D. Mo. July 22, 2014)

Kehrer Bros. Constr., Inc. v. Intercoastal Roofing Sols., LLC, 2013 WL 11740243 (S.D. Iowa Dec. 19, 2013)

Anheuser Busch Cos. v. Conn. Gen. Life Ins. Co., 2013 WL 2457247 (E.D. Mo. June 6, 2013)

Chem Gro of Houghton, Inc. v. Lewis Cnty. Rural Elec. Coop Ass'n, 2012 WL 1025001 (E.D. Mo. Mar. 26, 2012)

S. Wine & Spirits of Nevada v. Mountain Valley Spring Co., 2008 WL 2186176 (W.D. Ark. May 23, 2008)

Butts v. InterSecurities, Inc., 2008 WL 901822 (D.N.D. Mar. 31, 2008)

Day v. NES Equip. Servs. Corp., 2007 WL 2908188 (E.D. Mo. Oct. 3, 2007)

Fitzgerald Railcar Servs. of Omaha, Inc. v. Chief Transp. Prods., Inc., 2003 WL 21344535 (D. Neb. June 10, 2003)

B. Cases Applicable to ERISA Arguments

Vance v. Terrazas, 444 U.S. 252 (1980)

Perez v. Bruister, 823 F.3d 250 (5th Cir. 2016)

Braden v. Wal-Mart Stores, Inc., 588 F.3d 585 (8th Cir. 2009)

Stanko v. Patton, 228 F. App'x 623 (8th Cir. 2007)

Jordan v. Mich. Conf. of Teamsters Welfare Fund, 207 F.3d 854 (6th Cir. 2000)

Reich v. Compton, 57 F.3d 270, 279 (3d Cir. 1995), amended (Sept. 8, 1995)

Bonds v. Heeter, 2024 WL 2059721 (E.D. Mich. May 8, 2024)

Luense v. Konica Minolta Bus. Sols. U.S.A., Inc., 541 F. Supp. 3d 496 (D.N.J. 2021)

Acosta v. Schwab, 2019 WL 7046916 (E.D. Pa. Dec. 20, 2019)

Hile v. Jimmy Johns Highway 55, 899 F. Supp. 2d 843 (D. Minn. 2012)

Hans v. Tharaldson, 2011 WL 7179644 (D.N.D. Oct. 31, 2011)

Reich v. Constr. Laborers Local No. 1140, 908 F. Supp. 697 (D. Neb. 1995)